

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.233 OF 1997

IN

WRIT PETITION NO.2237 OF 1993

Thane Municipal Corporation,
Mahapalika Bhavan,
Dr.Almeida Road, Thane.

...Petitioner

Versus

1) M/s.K R P Constructions Pvt.Ltd.,
having their Office at
608, Vasant Prabhat Bldg.,
U.N.Purav Marg, Chembur,
Bombay - 400 071.

1.1.R.G.Deshpande

1.2.K.N.Parmar

1.3.P.A.Keer
Partners of M/s.K R P
Constructions

2.Secretary,
Dept.of Urban Development,
Maharashtra State,
Bombay.

3.State of Maharashtra

4.Krishnaji Bhaskar Sule,
Age 75 Yrs. Sule Park Co-op.
Housing Society, Naupada,
Thane.

...Respondents

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Mr.Girish Paryani i/b Mr.R.S.Apte for Petitioner.

Mr.D.A.Patil, A.G.P. for Respondent No.3.

Mr.P.G.Chavan i/b Mr.K.Y.Mandlik for Respondent
No.4.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 23, 2007.

ORAL ORDER :

1. The grievance in this Petition is about breach of order passed by the Division Bench of this Court dated 18th August 1993. Emphasis is placed on Clause 5 of the Order which reads thus :

"(5) It is also made clear that the petitioners will not put up any other construction except compound wall on the front side abutting the Main Road (Western Side)."

2. Relying on this direction, it is stated in Petition that on 22nd December 1994, when the Official of the Petitioner Corporation visited the building, it was noticed that construction of external walls of WC and bathrooms on the 6th and 7th floors were complete. It is then stated that once again inspection of the building was done by the Petitioner's Officials on 24th August 1995 and it was noticed that the brick work and plaster of the outer wall of the bathroom and WC on the

Southern and Northern side of the 6th and 7th floors was completed. On this assertion, present Contempt Petition has been filed to take action against the Respondents, in particular, Respondents 1, 1.1, 1.2 and 1.3.

3. Respondent No.1 is a Private Limited Company. During the pendency of this Petition on account of conditional order passed by the Registrar on 12th January 2000, Petition is already dismissed as against Respondents 1.1 and 1.2. In that sense, Petition survives only against Contemnor No.1.3.

4. Having considered the rival submissions, I am in agreement with the preliminary objection taken on behalf of the Respondent No.1 that the Petition on hand is barred by limitation. This is so because Petitioner Corporation has admitted in Para 2 of the Petition that they noticed construction of external walls of the WC and bathroom on the 6th and 7th floors on 22nd December 1994. If so, Petition, to initiate contempt action, ought to have been filed within one year in

terms of Section 20 of the Contempt of Courts Act, 1971. Whereas, the Petition has been filed on 22nd December 1995. On this count, the Petition deserves to be thrown out at the threshold.

5. Even if we were to consider the matter on merits, there is no averment whatsoever that the construction of the external walls of the WC and bathroom on the 6th and 7th floors was undertaken after 18th August 1993; it is only when the case for contempt can be said to have been made out. Merely saying that on inspection of the building, it was noticed that external walls of the WC and bathroom on the 6th and 7th floors was found to be constructed, is neither here nor there. Even on this count, the Petition will have to be thrown out and the allegation for breach of the order passed by the Division Bench on 18th August 1993 cannot be looked into.

6. Besides, I find substance in the submission canvassed on behalf of the Respondent No.1 that from the order dated 18th August 1993 itself, it is possible to infer that construction

of the building up to 5th floor was complete in all respects. In fact, in Clause (3) of the order at page 6, the Court has noted that the Petitioners/Respondents herein have already constructed the overhead tank on the top of the building. Besides, the Petitioners/Respondents herein were permitted to give water connection through the said tank to the occupants up to 5th floor including necessary plumbing and electrical work. In clause (4) of the order, the Court has noted that 6th and 7th floors' construction would be subject to the result of the Writ Petition. What was the status of the construction at the relevant time is not clearly spelt out in the Petition.

7. The contempt action being quasi criminal action, it is necessary to clearly spell out the charge and provide for the material facts on the basis of which the allegation of contempt can be substantiated. That is lacking in the present Petition. Be that as it may, it is obvious from the order dated 18th August 1993, that the building was already constructed upto the overhead tank.

All that the Petitioners/Respondents herein were expected to observe is not to put up any further construction except the compound wall on the front side. But as mentioned earlier, there is no averment in the Petition that any further construction was carried on by the contemnors after the date of the order as such. Accordingly, this Petition should fail. The same is dismissed.

A.M.KHANWILKAR, J.